

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

HEARING PROCEDURE
FOR TENTATIVE CLEAN UP AND ABATEMENT
ORDER NO. R9-2008-0152

ISSUED TO DR. WILLIAM MORITZ AND LORI MORITZ
14272 JEROME DRIVE, CITY OF POWAY
SAN DIEGO COUNTY

SCHEDULED FOR FEBRUARY 11, 2009

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer has issued Tentative Clean Up and Abatement (CAO) Order No. R9-2008-0152 to Dr. Bill Moritz and Lori Moritz concerning discharges of sediment and rock into an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and then Poway Creek. The discharges are alleged to have occurred on the Moritz's property, located at 14272 Jerome Drive, Poway, California. The Tentative CAO would direct the Moritzes to clean up waste and abate the effects of waste, including restoration of the site to pre-project conditions. A hearing is currently scheduled to be held before the California Regional Water Quality Control Board, San Diego Region (Regional Board) during its February 11, 2009 meeting.

Purpose of Hearing

The purpose of the hearing is for the Regional Board to consider relevant comments and evidence concerning the Tentative CAO. The Regional Board will decide whether to adopt, modify and adopt, or reject the Tentative CAO. The public hearing on February 11, 2009 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the Regional Board's offices located at 9174 Sky Park Court, San Diego, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at <http://www.waterboards.ca.gov/sandiego>.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. A copy of the general procedures governing adjudicatory hearings before the Regional

Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM NO LATER THAN DECEMBER 30, 2008, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Team
- (2) Dr. Bill Moritz and Lori Moritz

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on December 30, 2008 to Catherine George Hagan, Senior Staff Counsel, 9174 Sky Park Court, Suite 100, San Diego, California, 92123 (facsimile 858-571-6972; email: chagan@waterboards.ca.gov). The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not

adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on January 7, 2009. The parties will be notified by 5 p.m. on January 9, 2009 in writing whether the request has been granted or denied.

Primary Contacts

Advisory Team:

John Robertus
Executive Officer
9174 Sky Park Court, Suite 100
San Diego, CA 92123
Email: jrobertus@waterboards.ca.gov
Tel: 858-467-2952
Fax: 858-571-6972

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123
Email: chagan@waterboards.ca.gov
Tel: 858-467-2958
Fax: 858-571-6972

Prosecution Team:

Mike McCann
Assistant Executive Officer
9174 Sky Park Court, Suite 100
San Diego, CA 92123
Email: mmccann@waterboards.ca.gov
Tel: 858-467-2952
Fax: 858-

Christopher Means
Environmental Scientist
9174 Sky Park Court, Suite 100
San Diego, CA 92123
Email: cmeans@waterboards.ca.gov
Tel: 858-637-5581
Fax: 858-571-6972

Jorge Leon

Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100 [95814]
Sacramento, CA 95812
Email: jleon@waterboards.ca.gov
Tel: 916-341-5180
Fax: 916-341-5284

Discharger:

Douglas J. Simpson
The Simpson Law Firm
1224 10th Street, Suite 201
Coronado, CA 92118
Email: dsimpson@simpsonlawfirm.com
Tel: 619-437-6900
Fax: 619-437-6903

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: Catherine George Hagan, Senior Staff Counsel and John Robertus, Executive Officer. Members of the Prosecution Team are: Christopher Means, Environmental Scientist, Mike McCann, Assistant Executive Officer and Jorge Leon, Senior Staff Counsel, Office of Enforcement. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated

parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team no later than ten days after all of the evidence has been submitted. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

Evidence, Exhibits and Policy Statements

The following information must be submitted in advance of the hearing:

1. All written evidence and exhibits that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The Prosecution Team shall submit 14 hard copies and one electronic copy of the information to Catherine George Hagan no later than 5 p.m. on January 9, 2009.

The remaining designated parties shall submit 14 hard copies and one electronic copy of the information to Catherine George Hagan no later than 5 p.m. on January 23.

In addition to the foregoing, each designated party shall provide (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than January 28, 2009. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection by 5 p.m. on January 28 to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Tentative CAO and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 9174 Sky Park Court, Suite 100, San Diego California, 92123 (attention: Sylvia Wellnitz (858-467-2952)).

This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/sandiego>. Although the web page is updated regularly, to assure access to the latest information, you may contact Christopher Means.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan.

IMPORTANT DEADLINES

December 17, 2008	Hearing Procedures Document issued by Advisory Team
December 30, 2008	Deadline for comments and objections on Hearing Procedure
December 30, 2008	Deadline for requests for designated party status
January 7, 2009	Deadline for opposition to requests for designated party status
January 9, 2009	Advisory Team issues decision on requests for designated party status
January 9, 2009	Prosecution Team's deadline for submission of evidence, testimony and witness lists.
January 23, 2009	Remaining designated parties' deadline for submission of evidence, testimony and witness lists.
January 28, 2009	All designated parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
February 11, 2009	Hearing


Executive Officer

December 17, 2008